



R/W MANUAL CHANGE

RWMC- 185



PROCEDURAL HANDBOOK
(1984 Edition)

RWPH-____-____-____
TRANSMITTAL#____

TITLE:

RIGHT OF WAY ENGINEERING

APPROVED BY:



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SUBJECT AREA:

CHAPTER 6 - RIGHT OF WAY ENGINEERING

ISSUING UNIT:

OFFICE OF LAND SURVEYS

SUMMARY OF CHANGES: Revises Sections 6.08.07.00, 6.08.07.01, and 6.08.07.02. Updates Table of Contents.

PURPOSE

This manual change revises Section 6.08.07.00 Condemnation Improvement Clauses, Section 6.08.07.01 Condemnation Improvement Removal Clause, and Section 6.08.07.02 Condemnation Improvement Severance Clause. Formatting update was applied and, where applicable, general typographical errors were corrected.

BACKGROUND

This manual change addresses situations where entry onto the remainder is required for the removal or relocation of some or all improvements straddling the proposed right of way, and will clarify the location of the encumbrance on the remainder.

PROCEDURES

- | | |
|------------|---|
| 6.08.07.00 | Defines the usage of Condemnation Improvement Clauses. |
| 6.08.07.01 | Revises the clause to separately clarify a specific time frame for the Condemnation Improvement Removal and allows for ingress and egress to said easement, if necessary. |
| 6.08.07.02 | Revises the clause to separately clarify a specific time frame for the Condemnation Improvement Severance and allows for ingress and egress to said easement, if necessary. |

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

Chapter

Remove Old Pages

Insert New/Revised Pages

Remove the following in its entirety:

Replace with the following in its entirety:

6 - Sections Table of Contents (REV 12/2004)
6.08.00.00

Table of Contents (REV 1/2009)
6.08.00.00 (REV 1/2009)

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6.08.01.00 Classification of Clauses

For the purpose of extinguishing access rights with or without additional land, a “CF” series of clauses known as the “CF,” “CFO,” and “CFNL” clauses have been devised. Other clauses have also been devised for specific circumstances and are shown under their own Sections.

These clauses are used when widening an existing highway or in converting existing highways into freeways or expressways and for the purpose of showing the nonexistence of access rights in acquiring land where no abutter’s rights exist, such as a freeway on a new alignment. These clauses are for general usage and must be checked for conformance with each particular situation. Prior approval from the Division to modify them to conform to special situations may be necessary.

The (Alpha designation) following each clause refers to the example on Exhibit 6-4, “Condemnation Parcel Freeway Situation Requiring Access Clauses.”

6.08.02.00 “CF” Series

The “CF” clauses extinguish the abutting owner’s rights of access to or from the freeway.

6.08.02.01 CF-1 Condemnation and Extinguishment of Existing Access Rights or Condemnation Where No Access Rights Exist

The comprehensive access clause “Lands abutting said freeway shall have no right or easement of access thereto.” shown in clause A.1. below, will be used where access rights do exist, such as in widening an existing highway by a partial acquisition of the abutting property. In some cases, it will be used for constructive notice purposes where access rights do not exist, such as a partial acquisition on a new alignment.

A. ***“Parcel 1: For freeway purposes, that portion of _____, described as follows:***

(Description of Parcel)

1. Lands abutting said freeway shall have no right or easement of access thereto.” (A)

NOTE: In all cases, the words “said freeway” means only the land lying within the described boundaries and no more.

If access rights are to be extinguished along only a portion of the highway frontage, delete the period after “thereto” in A.1. above and add a phrase such as the following:

2. “except over and across the above described 20-foot course, the center of which said access opening lies westerly of and opposite Engineer’s Station 10+50 of said survey.” (B)

NOTE: By excepting certain lines from the above access restriction clause, the access the owner is to have is described in a positive manner.

In the case of an adjoining cross street at the same elevation as the freeway, which cross street is not to be closed, nothing further than the comprehensive access clause is necessary. The same is true if the cross road and freeway are to be at different elevations.

In the case of an adjoining cross street at the same elevation as the freeway, which cross street is to be closed and will not connect into the proposed freeway, the comprehensive access clause stated above would be preceded by a qualifying clause such as follows:

3. ***“Together with the extinguishment of all easements of Access appurtenant to the remaining lands on and over Carson Street, resulting from the closing of Carson Street at the freeway along the northerly prolongations of the easterly and westerly lines of the above described 200-foot strip of land across said Carson Street. Lands abutting said freeway shall have no right or easement of access thereto.” (C)***

B. If fee title is to be acquired in the adjoining public road but it is not to be closed, it would be described separately such as:

1. ***“Parcel 1-B: For State highway purposes, that portion of said Carson Street described as follows: (D)***

(Description of Parcel)”

If fee title is to be acquired in the adjoining public road and it is to be closed, it would be described separately such as:

2. ***“Parcel 1-B: For freeway purposes, that portion of Carson Street described as follows: (E)***

(Description of Parcel)”

In either case, Parcel 1 would then be designated Parcel 1-A.

NOTE: If the adjoining cross street is to be closed, the comprehensive clause to extinguish existing access rights should not be added to the description of the road parcel because the public road parcel, without the extinguishment of access, has only nominal value. If extinguishment of access is included with the road parcel, it would prevent the court from so instructing the jury.

6.08.02.02 CF-2 Condemnation and Extinguishment of Access Rights; Extinguishment of Access Rights Along Side Line of Existing Longitudinal or Cross Road or Street Beyond Parcel; Condemnation Where No Access Rights Exist

If in addition to acquiring land for a freeway where access rights do exist (such as in widening an existing highway, except along property lines) or where access rights do not exist (such as a highway on a new alignment), and it is necessary with a particular parcel to extinguish existing access rights over a portion of the boundary of an existing longitudinal or cross road or street, which portions are beyond the limits of the land to be acquired, a clause to extinguish access to such longitudinal or cross street or road will be used. Such clause will precede the comprehensive access clause (see C.1.).

Examples of this are:

“Parcel 6: For freeway purposes, that portion of _____, described as follows:

(Description of Parcel)”

A clause for access over existing longitudinal road boundary line which is to be a boundary of the freeway:

- A. “Together with the extinguishment of all easements of access appurtenant to the remaining lands in and to said Pico Avenue (the avenue would be mentioned in the above description) over and across that portion of the easterly line of said Pico Avenue extending northerly from the most northerly corner of the above described Parcel 6 to the northerly line of said remaining lands.” (F)**

A clause for access over existing cross road or street boundary line beyond freeway boundary:

- B. “Together with the extinguishment of all easements of access appurtenant to that portion of the owner’s remaining property which lies easterly of the above described Parcel 6 in and to said Walnut Road (the cross road or street would be mentioned in the above description) over and across that portion of the northerly line of said Walnut Road which extends easterly 200 feet from the southerly terminus of the above described course (7).” (G)**

In either of the above cases, the standard comprehensive access clause would follow:

- C. 1. “Lands abutting said freeway shall have no right or easement of access thereto.”**

If access rights are to be allowed across part of the freeway parcel boundaries or across part of the highway or cross road or street frontage or side lines, delete the period after “thereto” and add a phrase such as follows:

- 2. “except over and across courses (2) and (3) and the westerly 10 feet of course (4) hereinabove described.”**

(In this case, courses in the metes and bounds description of the parcel would be previously numbered.) (H)

For a very irregular parcel with access to be allowed across several lines, a phrase such as follows could be used:

- 3. “except over and across the southerly 30.00 feet of the northerly 81.06 feet of the course described above as N. 45° 38' E., 305.20 feet, and over and across the northerly 15.00 feet of the course described above as N. 44° 28' E., 627.50 feet. The centers of said access openings lie easterly at right angles, respectively opposite Engineer’s Stations 18+67.82 and 25+50 of said survey.”**

NOTE: By excepting certain lines from the above access restriction clause, the access the owner is to have is described in a positive manner.

6.08.03.00 “CFO” Series

The “CFO” clauses are for freeways having a frontage road. They extinguish all appurtenant abutter’s access rights only to the main thoroughfare of the freeway.

6.08.03.01 CFO-1 Condemnation for Freeway and Frontage Road

“Parcel 10: For freeway purposes, that portion of _____, described as follows:

(Description of Parcel—NOTE: The frontage road area is a part of the described parcel.)”

- A. *“Lands abutting said freeway shall have no right or easement of access thereto; provided, however, that part of the remaining lands which lies _____ of said parcel shall abut upon and have access to an adjoining frontage road which will be connected to the main thoroughfare of the freeway only at such points as may be established by public authority.” (I)*

If remaining lands lie on only one side of the freeway, delete the words *“which lies _____ of said parcel”* of the above description.

If access to the frontage road is to be restricted or limited to a certain portion of the frontage road frontage, insert after the words “have access” in the above clause, the following:

- B. *“, as hereinafter provided,”*

and then add a description of the permitted access at the end of the clause such as the following:

“The said right of access to said frontage road is hereby expressly limited to Courses (2), (3) and (4) described above,”

or

“The said right of access to said frontage road is hereby expressly limited to the northerly 301.36 feet of the above-described course having a length of 639.41 feet.” (J)

NOTE: Any other appropriate description specifically defining limits of access rights will be satisfactory.

If the frontage road is not to be connected to the freeway at any point, but is to be connected to a road or street which passes over or under the freeway, substitute in the above the road or street name to which the connection will be made, such as *“to Long Beach Boulevard only at such points as may be established by public authority.”*

6.08.03.02 CFO-2 Condemnation for Freeway; Remainder to Abut on End of Stub Frontage Road

A special condition of abutting on a frontage road frequently occurs. It is the case of remaining property which abuts on the end, rather than along the side, of a stub frontage road. The access clause needs to state the provision that is made for the remainder to have access to the freeway along a stub frontage road which has been acquired from an adjoining owner as a part of the state highway right of way.

“Parcel 11: For freeway purposes, that portion of _____, described as follows:

(Description of Parcel)

“Lands abutting said freeway shall have no right or easement of access thereto; provided, however, that the remaining lands shall abut upon and have access to a frontage road over a 30-foot length of the northerly line of said remaining portion, which said 30 feet extends easterly from the easterly line of said parcel.” (K)

6.08.03.03 **CFO-3 Condemnation for Freeway; Remainder to Have Access Above or Beneath Freeway to Existing Adjoining Longitudinal Street or Road**

“Parcel 12: For freeway purposes, that portion of _____, described as follows:

(Description of Parcel)

“Lands abutting said freeway shall have no right or easement of access thereto; provided, however, that the remaining lands shall have access to Cahuenga Boulevard, a city street, by passage under said freeway approximately at said Engineer’s Station 100+00 with no right of access to the surface of the traveled way on said freeway.” (L)

NOTE: A location approximately at which the access is to be allowed above or beneath the freeway is necessary.

6.08.04.00 **“CFNL” Series**

The “CFNL” clauses extinguish all abutter’s access rights without acquiring any land.

6.08.04.01 **CFNL-1 Condemnation of Access Rights Only**

A. “Parcel 1: For freeway purposes, the extinguishment of all easement of access in and to _____ Street (or highway), appurtenant to Lot 6 of Tract 111, as per map recorded in Book 35, Page 16 of Miscellaneous Maps, records of _____ County over and across the east line of said Lot 6.” (M)

If land to which access rights are appurtenant cannot be briefly described as shown above, the description should be rearranged in a manner such as follows:

B. “Parcel 1: For freeway purposes, the extinguishment of all easement of access in and to _____ Street, appurtenant to the following described property, over and across that portion of the westerly line of said _____ Street described as follows:

(Description of the portion of the westerly line of the street)

“The said property to which said easement of access is appurtenant is described as follows:

(Description of the adjoining land to which the abutter’s rights are appurtenant)”

6.08.05.00 **For Temporary Access and for Temporary Purposes Due to Highway Construction**

The following three Sections illustrate condemnation clause methods of reserving temporary access to owners and of acquiring easements for temporary purposes due to highway construction. They would be used only infrequently and in cases where the completion date of the ultimate construction is not definitely fixed. Other cases for allowing temporary access or for acquiring temporary highway interests in property will not differ greatly from the clauses given.

6.08.05.01 **Frontage Road Construction Deferment Clause**

“The construction of said frontage road may be deferred for an indefinite period of time. Until such frontage road is constructed, said remaining property lying west of the above-described parcel shall have access to the nearest roadway of said freeway; provided, that all rights of access along said west side of said freeway shall cease and terminate when said frontage road is constructed and said remaining property shall then abut upon and have access to said frontage road which will be connected to the main thoroughfare of said freeway only at such points as may be established by public authority.”

6.08.05.02 **Vehicular Separation Construction Deferment Clause**

“Reserving unto owners of abutting lands, their successors or assigns, the right of access to a temporary crossing of said freeway, at grade, to the county road known as Los Positas Road, at Engineer’s Station 681+50 on said center line, until such time as the construction of a vehicular grade separation at or about Engineer’s Station 694+00 of said survey, for the purpose of a crossing over said freeway, at which time the temporary crossing at grade shall be closed and such rights permitting access to said temporary crossing shall cease and terminate in the same manner as if never made.”

6.08.05.03 **Temporary Railroad Detour Easement**

“The above-described parcel is to be used as a right of way for a railroad detour pending construction of a bridge separating the grades of the said San Diego and Arizona Eastern Railway and the State highway at said F Street, and the rights to be acquired therein shall cease and terminate on completion of said grade separation and in any event shall cease and terminate not later than December 31, 1962.”

6.08.06.00 **Access for Livestock Across Freeway Through Cattle Pass; Livestock and Agricultural Equipment Access Under Bridge; Maintenance is Owner’s Obligation**

“Also excepting and reserving, unto the owners of abutting lands, their successors or assigns, the privilege of moving livestock across and beneath said freeway through a drainage and cattle pass structure to be constructed under the roadbed of said freeway at approximately Engineer’s Station “B” 634+82 of the base line of the hereinabove described survey; also, the privilege of moving livestock, equipment, machinery and vehicles for agricultural purposes across and beneath said freeway at a bridge to be constructed across Dry Creek at approximately Engineer’s Station “B” 682+17 of the base line of said survey; provided that such privilege shall not be exercised at the surface of said freeway, or by means other than the hereinabove described structure, or for any other purpose, and that such privilege shall cease and terminate upon the discontinuance of the use of the abutting lands for agricultural purposes; provided, further, that any maintenance of said crossings required by reason of the use thereof for purposes of the owners of abutting lands shall be the obligation of said owners of abutting lands.”

6.08.07.00 **Condemnation Improvement Clauses**

The Condemnation Improvement clauses are used for acquiring the rights to enter a portion of the remainder of the landowner’s property in order to sever or remove permanent structures that are located partially within the right of way to be acquired.

6.08.07.01 Condemnation Improvement Removal Clause

The following clause will be added to the description of the parcel being condemned:

“TOGETHER WITH all of the existing improvements which are located partially within and partially outside the boundaries of the above-described parcel.”

A temporary easement will be added to cover the area of the owner’s remaining property needed to accomplish the removal of the improvements. The temporary easement will be described as follows:

“TOGETHER WITH a temporary easement, to expire on (date), over and across the following described parcel for the purpose of removing existing improvements.

(Description)”

If necessary for access to the area of work, the following may be added:

“AND, a temporary easement, to expire on the date above, for the purpose of ingress and egress, described as:

(Description)”

6.08.07.02 Condemnation Improvement Severance Clause

The following clause will be added to the description of the parcel being condemned:

“TOGETHER WITH the temporary easement, to expire on (date), for the purpose of severing and removing the portions of improvements which lie within the above-described parcel and for the purpose of constructing and maintaining any shoring, braces, foundations or walls necessary to support the remaining improvements on the remaining portion of owner's property. Said temporary easement is described as:

(Description)”

If necessary for access to the area of work, the following may be added:

“AND, a temporary easement, to expire on the date above, for the purpose of ingress and egress, described as:

(Description)”

NOTES: